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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/932,509	08/17/2001	David C. Hargrove	10016772-1	6315

7590 07/15/2004

HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins, CO 80527-2400

EXAMINER

NAHAR, QAMRUN

ART UNIT	PAPER NUMBER
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2124

DATE MAILED: 07/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)	
09/932,509	HARGROVE ET AL.	
Examiner	Art Unit	
Qamrun Nahar	2124	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>4/18/03</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-22 have been examined.

Claim Objections

2. Claims 2-7 are objected to because of the following informalities: "A method as recited" in line 1 of the claims should be "The method as recited". Appropriate correction is required.
3. Claims 9-15 are objected to because of the following informalities: "A software distribution medium as recited" in line 1 of the claims should be "The software distribution medium as recited". Appropriate correction is required.
4. Claim 13 is objected to because of the following informalities: "corresponding the" on line 7 of the claim should be "corresponding to the". Appropriate correction is required.
5. Claims 17-19 are objected to because of the following informalities: "A computer as recited" in line 1 of the claims should be "The computer as recited". Appropriate correction is required.
6. Claims 21-22 are objected to because of the following informalities: "A system as recited" in line 1 of the claims should be "The system as recited". Appropriate correction is required.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 recites the limitation "the computer device" in lines 2-3 of the claim.

There is insufficient antecedent basis for this limitation in the claim. This limitation is interpreted as "the computer".

Claim Rejections - 35 USC § 101

9. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

10. Claims 8-15 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

As per claim 8, merely claimed as a program representing a computer listing *per se* (software distribution medium), that is, descriptions or expressions of such a program and that is, descriptive material *per se*, non-functional descriptive material, and is not statutory because it is not a physical "thing" nor a statutory process, as there are not "acts" being performed. Such claimed programs do not define any structural and functional interrelationships between the program and other claimed aspects of the invention which permit the program's functionality to be realized. Since a computer

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program is merely a set of instructions capable of being executed by a computer, the program itself is not a process, without the computer-readable medium needed to realize the program's functionality. In contrast, a claimed computer-readable medium encoded with a program defines structural and functional interrelationships between the program and the medium which permit the program's functionality to be realized, and is thus statutory. **Warmerdam**, 33 F.3d at 1361, 31 USPQ2d at 1760. **In re Sarkar**, 588 F.2d 1330, 1333, 200 USPQ 132, 137 (CCPA 1978). See MPEP § 2106(IV)(B)(1)(a).

It is suggested that claim 8 be amended to recite the claimed software distribution medium as "A software distribution medium embodied with computer executable instructions".

As per claims 9-15, these claims are rejected for dependency on the above rejected non-statutory claim 8.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

12. Claims 1, 6-7, 14-15 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Forbes (U.S. 6,381,742).

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Per Claim 1:

The Forbes patent discloses:

- **a method of installing software on a computer** (“A software package manager uses a distribution unit containing components for a software package and a manifest file that describes the distribution unit to manage the installation, execution, and uninstallation of software packages on a computer.” in column 2, lines 38-42)

- **contacting a software distribution medium, the software distribution medium comprising multiple software versions for installation on a computer; automatically locating an INF file; and installing a correct software version on the computer based on information within the INF file** (“For installation, the package manager acquires the manifest file and parses it to learn if the software package depends on any additional components. The package manager resolves any dependencies by acquiring a distribution unit containing the needed component and installs the dependency’s distribution unit as described below. Because dependencies can be nested within dependencies, the package manager recursively processes all the dependencies before finishing the installation of the software package that depends upon the additional components. ... The manifest file and distribution unit can be stored on all types of media from traditional magnetic and optical disks to networked servers.” in column 2, lines 42-52 and column 3, lines 15-17).

Per Claim 6:

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The Forbes patent discloses:

- wherein the software distribution medium is embodied as a computer storage medium selected from a group of computer storage media comprising: a flash memory; a hard disk; read only memory (ROM); a removable floppy disk; and a removable optical disk (column 3, lines 15-17).

Per Claim 7 (as best understood):

The Forbes patent discloses:

- wherein the software distribution medium is a computer storage medium associated with a remote server coupled to the computer via a network (column 3, lines 15-17).

Per Claim 14:

This is a software distribution medium version of the claimed method discussed above, claim 6, wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, this claim is also anticipated by Forbes.

Per Claim 15:

This is a software distribution medium version of the claimed method discussed above, claim 7, wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, this claim is also anticipated by Forbes.

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Per Claim 19:

This is a computer version of the claimed software distribution medium discussed above, claim 14, wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, this claim is also anticipated by Forbes.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 2-5, 8-13, 16-18 and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forbes (U.S. 6,381,742) in view of Davis (U.S. 5,742,829).

Per Claim 2:

The rejection of claim 1 is incorporated, and further, Forbes does not explicitly teach accessing within the INF file, a source section and a strings section that correspond to a country code and a version of an operating system present on the computer; replacing path variables in the source section with path values from the strings section; and locating the correct software version based on the path values. Davis teaches accessing within the INF file, a source section and a strings section that correspond to a country code and a version of an operating system present on the computer; replacing path variables in the

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source section with path values from the strings section; and locating the correct software version based on the path values (column 6, line 66 to column 8, line 21; and Table 3).

It would have been obvious to one having ordinary skill in the computer art at the time of the invention was made to modify the method disclosed by Forbes to include accessing within the INF file, a source section and a strings section that correspond to a country code and a version of an operating system present on the computer; replacing path variables in the source section with path values from the strings section; and locating the correct software version based on the path values using the teaching of Davis. The modification would be obvious because one of ordinary skill in the art would be motivated to accommodate different natural languages in a heterogeneous computer environment (Davis, column 1, lines 59-65).

Per Claim 3:

The rejection of claim 1 is incorporated, and further, Forbes does not explicitly teach wherein the INF file is located in a root directory of the software distribution medium and the correct software version is located in a subdirectory of the software distribution medium. Davis teaches wherein the INF file is located in a root directory of the software distribution medium and the correct software version is located in a subdirectory of the software distribution medium (column 6, line 66 to column 8, line 21; and Table 3).

It would have been obvious to one having ordinary skill in the computer art at the time of the invention was made to modify the method disclosed by Forbes to include wherein the INF file is located in a root directory of the software distribution medium and

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the correct software version is located in a subdirectory of the software distribution medium using the teaching of Davis. The modification would be obvious because one of ordinary skill in the art would be motivated to accommodate different natural languages in a heterogeneous computer environment (Davis, column 1, lines 59-65).

Per Claim 4:

The rejection of claim 2 is incorporated, and Davis further teaches wherein the correct software version corresponds to the country code and the version of the operating system present on the computer (column 7, lines 57-67 to column 8, lines 1-21).

Per Claim 5:

The rejection of claim 3 is incorporated, and the combination of Forbes and Davis further teaches manually locating a secondary INF file within the subdirectory; and installing the correct software version on the computer based on information within the secondary INF file (Forbes, column 2, lines 42-52; and Davis, column 6, line 66 to column 8, line 21; and Table 3).

Per Claim 8:

This is a software distribution medium version of the claimed method discussed above (claims 1, 3 and 5), wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, this claim is also obvious.

Per Claim 9:

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This is a software distribution medium version of the claimed method discussed above (claims 3 and 5), wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, this claim is also obvious.

Per Claim 10:

This is a software distribution medium version of the claimed method discussed above, claim 5, wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, this claim is also obvious.

Per Claim 11:

This is a software distribution medium version of the claimed method discussed above, claim 4, wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, this claim is also obvious.

Per Claim 12:

This is a software distribution medium version of the claimed method discussed above (claims 3 and 5), wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, this claim is also obvious.

Per Claim 13:

This is a software distribution medium version of the claimed method discussed above, claim 2, wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, this claim is also obvious.

Per Claims 16-17:

These are computer versions of the claimed software distribution medium discussed above, claim 8, wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, these claims are also obvious.

Per Claim 18:

This is a computer version of the claimed software distribution medium discussed above, claim 11, wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, this claim is also obvious.

Per Claims 20-21:

These are system versions of the claimed software distribution medium discussed above (claims 8-10 and 12), wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, these claims are also obvious.

Per Claim 22:

This is a system version of the claimed software distribution medium discussed above, claim 11, wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, this claim is also obvious.

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Conclusion

15. Any inquiry concerning this communication from the examiner should be directed to Qamrun Nahar whose telephone number is (703) 305-7699. The examiner can normally be reached on Mondays through Thursdays from 9:00 AM to 6:30 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki, can be reached on (703) 305-9662. The fax phone number for the organization where this application or processing is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kakali Chaki

QN
July 9, 2004

**KAKALI CHAKI
SUPERVISORY PATENT EXAMINER
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